

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN**

MICHAEL SCHULTZ, JOHN SCALA,
HUUB VAN ROOSMALEN, KIP KIRCHER,
ROBERT H. WAKE, and LOUIS
SPANBERGER, On Behalf of Themselves and
All Others Similarly Situated,

PLAINTIFFS,

08-CV-00314-SLC

v.

08-CV-00342-SLC

TOMOTHERAPY INCORPORATED,
FREDERICK A. ROBERTSON, T.
ROCKWELL MACKIE, STEPHEN C.
HATHAWAY, PAUL RECKWERDT,
MICHAEL J. CUDAHY, JOHN J.
MCDONOUGH, JOHN NEIS, CARY C.
NOLAN, CARLOS A. PEREZ, M.D., SAM R.
LENO, and FRANCES S. TAYLOR,

DEFENDANTS.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Lead Plaintiffs Michael Schultz (“Schultz”), John Scala (“Scala”), Huub Van Roosmalen (“Van Roosmalen”), Kip Kircher (“Kircher”), and additional Plaintiffs Robert H. Wake (“Wake”) and Louis Spanberger (“Spanberger”) (collectively, “Plaintiffs”), by their undersigned counsel, respectfully move this Court for an Order: (i) appointing them as class representatives, and in particular, appointing Plaintiff Spanberger as Class Representative for the IPO Class, Plaintiff Van Roosmalen as Class Representative for the SPO Class, and Plaintiffs collectively as representatives for the 10b-5 Class; (ii) appointing Lead Counsel as Class Counsel; and (iii) certifying this action as a class action, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), on behalf of three Classes, defined as follows:

A 10b-5 Class, defined as:

All persons and entities who purchased or otherwise acquired the common stock of TomoTherapy Incorporated (“TOMO” or the “Company”) between May 9, 2007 and April 17, 2008, inclusive (the “Class Period”), and who were damaged thereby, excluding: Defendants TOMO, Frederick A. Robertson, M.D. (“Robertson”), T. Rockwell Mackie (“Mackie”), Stephen C. Hathaway (“Hathaway”), Paul J. Reckwerdt (“Reckwerdt”), Michael J. Cudahy (“Cudahy”), John J. McDonough (“McDonough”), John Neis (“Neis”), Cary C. Nolan (“Nolan”), Carlos A. Perez, M.D. (“Perez”), Sam R. Leno (“Leno”), and Frances S. Taylor (“Taylor”) (collectively, “Defendants”), any entity in which Defendants or any excluded person has or had a controlling interest, the officers and directors of TOMO, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party;

An IPO Class, defined as:

All persons and entities who acquired shares of TOMO’s common stock pursuant or traceable to the Initial Public Offering Registration Statement and Prospectus issued in connection with TOMO’s May 9, 2007 Initial Public Offering (“IPO”), and were damaged thereby, excluding: Defendants, any entity in which Defendants or any excluded person has or had a controlling interest, the officers and directors of TOMO, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party;

An SPO Class, defined as:

All persons and entities who acquired shares of TOMO’s common stock pursuant or traceable to the Secondary Public Offering Registration Statement and Prospectus issued in connection with TOMO’s October 16, 2007 Secondary Public Offering (“SPO”), and were damaged thereby, excluding: Defendants, any entity in which

Defendants or any excluded person has or had a controlling interest, the officers and directors of TOMO, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party.

As set forth below, and in the accompanying memorandum of law, the Class should be certified pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) because the Rule's prerequisites are satisfied.

1. Rule 23(a)(1)'s numerosity requirement is satisfied. Members of the Classes are so numerous that joinder of all members is impracticable. While the exact number of class members is unknown to Plaintiffs at this time, Plaintiffs believe that there are thousands of class members who are geographically dispersed across the country. Their identity and location can be readily obtained from Defendants' files and records.

2. Common questions of fact and law exist as to all members of the Classes and predominate over any questions solely affecting individual members of the Classes, in satisfaction of Rule 23(a)(2) and 23(b)(3).

3. Plaintiffs' claims are typical of the claims of the other members of the Classes, in satisfaction of Rule 23(a)(3). Plaintiffs and other members of the Classes have sustained damages because of Defendants' alleged unlawful activities.

4. Plaintiffs and their counsel will adequately represent the Classes in satisfaction of Rule 23(a)(4). Plaintiffs have retained counsel competent and experienced in securities fraud class actions and complex litigation, have prosecuted and are intending to continue to prosecute this action vigorously. Plaintiffs have no interests which are contrary to or in conflict with those of the Classes.

5. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. *See* Fed. R. Civ. P. 23(b)(3).

6. Plaintiffs have filed contemporaneously a memorandum of law and exhibits in support of this motion.

WHEREFORE, based upon the Corrected Second Amended Consolidated Class Action Complaint, and for the reasons set forth above and in Plaintiffs' contemporaneously filed supporting memorandum of law and supporting exhibits, this Court should enter an Order certifying this case as a class action pursuant to Fed. R. Civ. P. 23, certifying Plaintiffs as representatives of the Classes, and certifying Lead Counsel as Class Counsel.

DATED: December 30, 2009

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